

STATE OF MICHIGAN
COURT OF APPEALS

In re K. BANKS-GREGORY, Minor.

UNPUBLISHED
December 20, 2018

No. 344027
Kalamazoo Circuit Court
Family Division
LC No. 2015-000193-NA

Before: SWARTZLE, P.J., and SAWYER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent-mother appeals by right a trial court order terminating her parental rights to her minor child, KBG, pursuant to MCL 712A.19b(3)(c)(i) and (ii), (g), and (j). We affirm.

Respondent-mother argues that the trial court erred in finding that termination was in KBG’s best interests.¹ We review a trial court’s decision regarding the child’s best interests for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (quotation marks and citation omitted).

“Once a statutory ground for termination has been proven, the trial court must find that termination is in the child’s best interests before it can terminate parental rights.” *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). “[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence.” *In re Moss*, 301 Mich App at 90. A best-interest evaluation focuses on the child rather than the parent. *Id.* at 87. A trial court may consider “the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *In re Olive/Metts*, 297 Mich App at 41-42 (citations omitted). A trial court may also consider the duration that a child has lived with a foster family and whether “the child could be returned to [the] parent’s home within the foreseeable future, if at all.” *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012).

¹ Respondent-mother does not challenge the trial court’s determination that the statutory grounds were met.

In this case, the trial court found that termination was in KBG's best interests. The trial court reasoned that the Department of Health and Human Services (DHHS) provided services to respondent-mother for three years, yet she remained unable to overcome the barrier of substance abuse. The trial court noted that it would be difficult for KBG to be adopted given his age; however, adoption was not possible without termination of respondent-mother's parental rights. Respondent-mother had not consented to a guardianship for three years and termination would provide the possibility for adoption. The trial court reasoned that, given respondent-mother's continued use of illegal narcotics, it was in KBG's best interests to allow the state to determine his "best interests" going forward. In addition, respondent-mother's three younger children were again removed from respondent-mother's care and KBG had "lots of special needs."

The trial court did not clearly err in finding that termination was in KBG's best interests. The record evidence established that KBG was physically and mentally disabled and that he necessitated intensive care and medical attention. He was wheelchair bound, had a feeding tube, and he was medically fragile. KBG functioned at the level of a six-month-old child. Despite the DHHS providing services for three years, respondent-mother did not demonstrate the capacity to provide proper care and custody of KBG. Respondent-mother did not properly care for KBG's feeding tube site on more than one occasion during parenting visits, and she lost KBG's medications on other occasions. Respondent-mother's home was often cluttered and unclean. Respondent-mother also missed numerous medical appointments over the course of three years. KBG had multiple medical providers, and respondent-mother never demonstrated an ability to timely attend all of KBG's medical appointments. KBG's attendance at these appointments was paramount to his health and well-being. In contrast, the foster family had over 30 years' experience caring for disabled children and the family expressed a willingness to care for KBG until a permanent home could be secured for him.

In addition, the evidence showed that respondent-mother did not overcome her substance-abuse barrier. Initially, respondent-mother made progress on overcoming her struggles with substance abuse. She participated in substance-abuse counseling and drug screens. However, in or about November 2017, respondent-mother stopped attending the drug screens and she exhibited an unwillingness to work with the DHHS. After that, respondent-mother stopped attending parenting-time sessions and KBG's medical appointments. In early 2018, respondent-mother appeared at her daughter's school under what appeared to be the influence of methamphetamine and she was arrested and jailed for a time. Respondent-mother then tested positive for methamphetamine use in February and March 2018. At the time of the termination hearing, respondent-mother had criminal charges pending. It was apparent that respondent-mother began abusing illegal substances again. Respondent-mother's struggle with illegal substances was a barrier that prevented her from providing proper care and custody of KBG.

Respondent-mother had other barriers that prevented her from being able to provide proper care and custody of KBG such that termination was in KBG's best interests. Respondent-mother did not have a legal source of income, and she showed no interest in seeking assistance in obtaining employment. Furthermore, respondent-mother's psychological evaluation indicated that she would struggle with providing care and custody of KBG. Respondent-mother had many issues of her own to overcome, and she did not demonstrate the capacity to provide intensive care to a medically fragile child such as KBG. Moreover, the caseworker testified that it was in KBG's best interests to terminate respondent-mother's parental rights. There was no possibility

that respondent-mother could provide KBG a proper home within a reasonable amount of time. In contrast, termination provided KBG the opportunity at adoption and long-term stability. Given this record, the trial court did not clearly err in finding that termination was in KBG's best interests.

Respondent-mother argues that the trial court abrogated its responsibility to determine that termination was in KBG's best interests when it indicated that the state would determine KBG's best interests. This argument lacks merit.

During its findings with respect to KBG's best interests, the trial court stated as follows:

I have acknowledged the opinion of the testimony that I heard today, but the likelihood of him being adopted it may not be likely, but it can't be without the terminations.

If his mother or father were capable of giving some rational consent, but that is what we have been waiting for, for three years. Today is the deadline. Today is the day you make a decision. There is no guardianship, it never happened, it hasn't happened for three years.

Is it in his best interest to set him free to be able to be adopted? Well . . . the State of Michigan—is going to be making that decision in the alternative of mom. And the fact that mom is still using narcotics I think it is in his best interest to let the state make that decision what is going to be in his best interest from this point.

In making these findings, the trial court did not abrogate its responsibility to determine whether termination was in KBG's best interests. In context, the trial court clearly found that termination of respondent-mother's rights would be in KBG's best interests because respondent-mother would not serve as a barrier to making legal decisions that a guardian or adoptive parent could make for KBG. The trial court's reference to the state determining what was in KBG's best interests was a clear reference to the state's potential to place KBG in an adoptive home or a guardianship going forward. Moreover, the trial court considered that respondent-mother received services for three years and continued to abuse narcotics. Reviewing the findings as a whole, it was apparent that the trial court found that termination was in KBG's best interests and it did not clearly err in doing so.

Respondent-mother also notes that the trial court erroneously found that KBG was placed with his siblings. It is unclear whether the trial court erroneously concluded that the three younger siblings were in the same placement as KBG. To the extent that the trial court did, this was clearly erroneous. However, the error did not impact the trial court's overall conclusion that termination was in KBG's best interests. The trial court indicated that it considered that the younger children were again removed from respondent-mother's home. This finding concerned respondent-mother's fitness and ability to provide a proper home and care for KBG. Evidence that the younger children were removed from respondent-mother's home supported the trial court's finding that termination was in KBG's best interests because it showed that respondent-mother continued to abuse substances and could not provide proper care and custody of children.

Considering the trial court's findings as a whole, the trial court did not clearly err in finding that termination was in KBG's best interests.

Affirmed.

/s/ Brock A. Swartzle

/s/ David H. Sawyer

/s/ Amy Ronayne Krause